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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/773,722	02/06/2004	Kevin Johnson	22160-RA	8303

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EXAMINER
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LHYMN, EUGENE

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 06/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/773,722	Applicant(s) JOHNSON, KEVIN ✓	
	Examiner Eugene Lhymn	Art Unit 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) 21 and 22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>5/5/04</u> . | 6) <input type="checkbox"/> Other: ____.  |

## DETAILED ACTION

### *Election/Restrictions*

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-20 drawn to product claims, classified in class 220 subclass 553.
  - II. Claims 21-22 drawn to method claims, classified in class 53, subclass unknown.
2. Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product. See MPEP § 806.05(h). In the instant case, the product as claimed can be used in a materially different process, wherein the vessels don't have to be filled.
3. During a telephone conversation with Sandra Drummond on 5/16/06 a provisional election was made without traverse to prosecute the invention of the product claims 1-20. Affirmation of this election must be made by applicant in replying to this Office action. Claims 21-22 withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 2, 3, 6-14, 16-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Hermann (US 5437381). With respect to claim 1, Hermann discloses the following:

- A container, said container comprising: a first fillable member 2; and a second fillable member, said second fillable member 12 disposed within said first fillable member, wherein said second fillable member defines a three-dimensional design (Fig. 5)

With respect to claim 2, Hermann discloses the container of claim 1, wherein each said fillable member of said container further comprises a neck member and a vessel member (Fig. 5, items 12 and 2), and wherein said vessel member of said second fillable member is carried substantially within said vessel member of said first fillable member, as shown in Fig. 5.

With respect to claim 3, Hermann discloses the container of claim 2, further comprising a fill aperture, wherein said neck member of said first fillable member and said neck member of said second fillable member define said fill aperture (Fig. 5,

wherein 2 and 12 both comprise respective upper neck regions that ultimately define fill aperture).

With respect to claims 6 & 16, Hermann discloses the container of claim 1, wherein said second fillable member shares at least one wall with said first fillable member, as shown in Fig. 5 wherein the bottom wall of 12 and 2 are shared.

With respect to claims 7 & 17, Hermann discloses the container of claim 1, wherein said design of said second fillable member is selected from a group consisting of an animal, a mascot, a logo, an emblem, block-letters, or a combination thereof, wherein the inner container 12 is cylindrical, therefore replicating animals of such shape, for example a snake or eel.

With respect to claims 8 & 18, Hermann discloses the container of claim 1, wherein said design of said second fillable member is defined by a contoured surface.

With respect to claims 9 & 19, Hermann discloses the container of claim 1, wherein said design of said second fillable member is defined by a substantially smooth, imprinted surface, wherein the inner container 12 is clearly smooth, and has contours which form imprints on said container.

With respect to claims 10 & 20, Hermann discloses the container of claim 3, further comprising a lid, said lid dimensioned to removably seal said fill aperture (Fig. 1, items 22 and 8).

With respect to claim 11, Hermann discloses a container, said container comprising: a first fillable member; and a second fillable member, said second fillable member disposed within said first fillable member, wherein said second fillable member

is visible from the exterior of said first fillable member, wherein if the container lid 8 is removed, the inner container can be clearly seen from atop.

With respect to claim 12, Hermann discloses the container of claim 11, wherein each said fillable member of said container further comprises a neck member and a vessel member wherein each upper portion of 12 and 2 constitute neck portions, and wherein said vessel member of said fillable member is carried substantially within said vessel member of said first fillable member (Fig. 5).

With respect to claim 13, Hermann discloses the container of claim 12, further comprising a fill aperture, wherein said neck member of said first fillable member and said neck member of said second fillable member define said fill aperture (Fig. 5).

With respect to claim 14, Hermann discloses the container of claim 11, wherein said second fillable member defines a three-dimensional design, wherein the inner container 12 is a cylindrical prism, which is 3-D.

6. Claims 1-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Levy (US 5803268). With respect to claim 1, Levy discloses a container, said container comprising: a first fillable member defined by W1; and a second fillable member defined by W2, said second fillable member disposed within said first fillable member, wherein said second fillable member defines a three-dimensional design, as shown in Fig. 2.

With respect to claim 2, Levy discloses the container of claim 1, wherein each said fillable member of said container further comprises a neck member and a vessel

member (portion covered by D1, and D2, respectively), and wherein said vessel member of said second fillable member is carried substantially within said vessel member of said first fillable member, as shown in Fig. 2.

With respect to claim 3, Levy discloses the container of claim 2, further comprising a fill aperture, wherein said neck member of said first fillable member and said neck member of said second fillable member define said fill aperture, wherein said fill aperture comprises aperture formed by O2 & O1.

With respect to claim 4, Levy discloses the container of claim 1, wherein said first fillable member is of a generally transparent nature (Col. 3, Lines 5-10) and said design of said second fillable member is visible from the exterior of said first fillable member.

With respect to claim 5, Levy discloses the container of claim 1, wherein said first fillable member is formed from a solid material, said solid material selected from a group consisting of transparent material, translucent material, or a combination thereof (Col. 3, Lines 5-10).

With respect to claim 6, Levy discloses the container of claim 1, wherein said second fillable member shares at least one wall with said first fillable member, wherein the walls delimiting the second member defined by W2 clearly is part of the first member defined by W1, wherein the interior space defined by W1 (Fig. 2).

With respect to claim 7, Levy discloses the container of claim 1, wherein said design of said second fillable member is selected from a group consisting of an animal, a mascot, a logo, an emblem, block-letters, or a combination thereof, wherein the inner, second member clearly resembles a fish, which is an animal.

With respect to claim 8, Levy discloses the container of claim 1, wherein said design of said second fillable member is defined by a contoured surface (Fig. 2).

With respect to claim 9, Levy discloses the container of claim 1, wherein said design of said second fillable member is defined by a substantially smooth, imprinted surface (Fig. 2).

With respect to claim 10, Levy discloses the container of claim 3, further comprising a lid, said lid dimensioned to removably seal said fill aperture (Fig. 2, item C2).

With respect to claim 11, Levy discloses a container, said container comprising: a first fillable member; and a second fillable member, said second fillable member disposed within said first fillable member, wherein said second fillable member is visible from the exterior of said first fillable member, wherein since the containers delimited by W1 and W2 are both transparent, the second member is clearly visible from the exterior.



Art Unit: 3727

With respect to claim 12, Levy discloses the container of claim 11, wherein each said fillable member of said container further comprises a neck member and a vessel member (portion covered by D1, and D2, respectively), and wherein said vessel member of said second fillable member is carried substantially within said vessel member of said first fillable member, as shown in Fig. 2.

With respect to claim 13, Levy discloses the container of claim 12, further comprising a fill aperture, wherein said neck member of said first fillable member and said neck member of said second fillable member define said fill aperture, wherein said fill aperture comprises aperture formed by O2 & O1.

With respect to claim 14, Levy discloses the container of claim 11, wherein said second fillable member defines a three-dimensional design (Fig. 2).

With respect to claim 15, Levy discloses the container of claim 11, wherein said first fillable member is formed from a solid material, said solid material selected from a group consisting of transparent material, translucent material, or a combination thereof (Col. 3, Lines 5-10).

With respect to claim 16, Levy discloses the container of claim 11, wherein said second fillable member shares at least one wall with said first fillable member wherein the walls delimiting the second member defined by W2 clearly is part of the first member defined

by W1, wherein the interior space defined by W1 (Fig. 2).

With respect to claim 17, Levy discloses the container of claim 14, wherein said design of said second fillable member is selected from a group consisting of an animal, a mascot, a logo, an emblem, block-letters, or a combination thereof wherein the inner, second member clearly resembles a fish, which is an animal.

With respect to claim 18, Levy discloses the container of claim 14, wherein said design of said second fillable member is defined by a contoured surface (Fig. 2).

With respect to claim 19, Levy discloses the container of claim 14, wherein said design of said second fillable member is defined by a substantially smooth, imprinted surface (Fig. 2).

With respect to claim 20, Levy discloses the container of claim 13, further comprising a lid, said lid dimensioned to removably seal said fill aperture (Fig. 2, item C2).

### ***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

Art Unit: 3727

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 4, 5, 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hermann in view of Maines (US 5921440). With respect to the claims, Hermann discloses the claimed invention except for the outer container being transparent so that the inner container can be seen from the outside. However, it is well known in the art to construct baby bottles of transparent material as demonstrated by Maines so as to view the inner contents of the bottle (Fig. 16). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to construct the outer container of Hermann to be transparent as taught by Maines so as to view the inner contents of the bottle.

### ***Conclusion***


9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See-PTO-892.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eugene Lhymn whose telephone number is 571-272-8712. The examiner can normally be reached on MTWT 6-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571)272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3727

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
NATHAN J. NEWHOUSE *FOR* Steve Castellano  
SUPERVISORY PATENT EXAMINER Primary Examiner